Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260

REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits these reply comments concerning the Commission's Notice of Proposed Rulemaking in this proceeding, released November 6, 1992 (Notice). The Notice addresses the implementation of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act of 1992).

I. THE COMMISSION'S NARROWBAND INSIDE WIRE RULES SHOULD GOVERN POLICY DEVELOPMENT IN IMPLEMENTING SECTION 16(d) OF THE CABLE ACT OF 1992.

The overwhelming number of commenters recognize the near-controlling significance of the Commission's rules and policies governing the provision of narrowband inside wiring. And they should. As the Electronics Industries Association points out, there is a convergence occurring between the provision of narrowband and the provision of broadband services.[1] The size of the pipeline to the premises of the customer does not change the fundamental value of many of the basic decisions made by

[1] Consumer Electronics Group of the Electronics Industries Association at 8.

the Commission in CC Docket No. 79-105 in resolving boundary questions between the end user and the network provider. The Commission should assert a decidedly pro-competitive, pro-customer policy here that assures that cable home wiring will be a gateway, not a bottleneck.

II. THE COMMISSION SHOULD DEAL WITH ALL CABLE HOME WIRING.

The Commission should resolve this issue for all cable customers. The Commission will not be carrying out the intent of Congress if it fails to deal with the many millions of cable customers who are out there today and who will inevitably have to confront the problem identified in section 16(d) of the new statute - what happens when they terminate service with a cable operator that claims to own something very basic installed in their home. Just as the Commission sought the optimum method to deal with embedded narrowband inside wiring, Congress has challenged the Commission to address and resolve the issues related to broadband inside wiring in the same manner. It would be inconsistent with the goals of the Cable Act of 1992 to deal with cable home wiring only prospectively as it is installed in new residences for new cable customers. This would ignore the overwhelming majority of cable customers.

A few cable interests claim that any rule must be completely prospective.[2] Some seek to construct limitations on the scope of the statute by suggesting that until the Commission and cable operator are faced with actual termination of service, there simply isn't an ownership issue for the Commission to address.[3] These arguments beg the question. These cable operators would like to maintain a secure, even assured point of leverage against the possible inroads of competition.[4] They would like to use home wiring to limit alternatives. However, that leverage point was precisely what the Cable Act of 1992 was intended to eliminate. This need not be limited to resolving ownership questions.[5]

As central to a procompetitive cable marketplace as cable home wiring ownership is the issue of customers' unconstrained "access" to that wiring within their residences.[6] A customer need not have ownership to be guaranteed unfettered access to the wire within his or her dwelling. Customers should not be held hostage through either undesirable bundling or limits on

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[2] See Time Warner at 19, and CATA at 4 (asking the Commission to exempt arrangements with all existing customers from the scope of any rule it adopts.)

[3] See Continental Cablevision at 6.

[4] See Comments of George Schwartz at 1.

[5] This is not to say that ownership issues should be avoided. See Comments of Liberty Cable at i.

[6] See UTC at 6 (key issue is right to use the wire, regardless of what is done on ownership.)

use of cable home wiring. Maintaining the liberty of the customer to have maximum communications access out of his or her dwelling was a paramount concern to Congress. Practices that would limit customers' self-determination and their inward and outward access should be rejected.

Because this proceeding deals with a relatively inexpensive (and more-than-likely-fully-expensed) material that would be of usefulness only to the customer-resident, the Commission also can recognize a uniquely personal dynamic at work here - that under the circumstances prevailing in the market, the installing cable operator or its agent may be said to have acceded to customer control over lawful use of that wiring when the wiring was installed. Because the wiring is located within the confines of a home, the Commission can conclude that cable operators knew at installation that the wiring would become affixed to the structure, and would be used for the convenience of the resident in a particular place; and that, given the experience of other utilities in dealing with inside wiring, it could not realistically be subject to reclamation for any other future use.

III. THE COMMISSION CAN BEST ASSURE A CLEAR AND UNCHALLENGEABLE RULE DEALING WITH "DISPOSITION" OF CABLE HOME WIRING IF IT HAS A CLEAR AND UNAMBIGUOUS RULE THAT APPLIES TO ALL CABLE HOME WIRING FROM THE COMMENCEMENT OF INSTALLATION.

A rulemaking that focuses narrowly on subscriber "termination" rights would overlook essential components of a pro-competitive policy, and would be self-defeating.[7]

Many commenters already have anticipated the efforts of cable operators to construct loopholes in the Cable Act's requirements. Thus, a few cable commenters inflate the concerns about signal leakage or theft of service.[8] A few look to create other exceptions or conditions that would swallow or subvert the rule.[9]

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[7] Multiplex Technology at 3,4 (suggests such a approach would promote subscriber "churn" and would force discriminatory framework onto "terminating" and "non-terminating" subscribers.) The Commission has power to address this under 47 USC 543(f).

[8] The Commission's staff is active and expert in the signal leakage area. It will recognize the different situation presented by the Notice, in comparison with signal leakage problems that occur in other parts of the distribution plant of a cable network. The New York Cable Commission raises some concerns here, but those concerns appear to be focused more on maintaining the power to implement technical rules to protect customers in New York, rather than on influencing the ultimate result on disposition of cable home wiring.

[9] See Time Warner at 3, 15, suggesting that the Commission create a third party contractor exemption. This would simply permit a different person, the third party contractor, to claim to own the cable home wiring. This is an especially pernicious result when one considers that a high percentage of cable installations are typically done by hired contractors who have special relationships with the cable operator.

As a practical matter, there will always be questions raised at the end of the contract relationship about the intent of the parties concerning ownership of cable home wiring unless the ownership rules have been spelled out by the parties at the contract's commencement, or there are other recognized guidelines that define the relationship.[10] Thus, the Commission can respond to Congress' objectives best if it adopts clear "prenuptial" guidelines and puts them in place for those times when contracting parties who are in disagreement actually do look back to help them determine what must be done about disposition. USTA agrees with the Wireless Cable Association in this regard.[11] Termination rights require commencement rules.[12]

IV. MULTIPLE DWELLINGS SHOULD NOT BE EXCLUDED FROM THE RULES.

As USTA stated in its comments, the Commission should favor a deregulated competitive cable home wiring market that

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See also TKR Cable at 8 (seeks a Federal right, greater than what government itself has under the Constitution, allowing cable operators to enter homes to inspect and search for violations of service conditions.) Contrast George Schwartz at 2 (electric and telephone companies do not enter homes to count outlets.)

[10] See National Private Cable Association/Maxtel at 6 (boilerplate language will be used against subscriber by cable company.)

[11] See Wireless Cable Association at 7.

[12] The Commission has power under the Cable Act of 1984 to address this, and states and franchising entities also have the power to deal with this issue. 47 USC 543(f), 552(c) and 556(a).

is consistent across the home access continuum. A few cable commenters seek to exclude multiple family dwellings,[13] in part because that is where the threat of competition is strongest. USTA believes that no customer residence should be excluded from a rule that promotes customer freedom to access the full range of competitive broadband providers. Multiple family dwellings may require special attention, but the Commission should not cut off this significant portion of the public from the benefits of alternative cable access. If there are problems with loop design, the answer is to provide for change, not to tolerate the anticompetitive status quo. Tolerating an architecture that promotes a captive customer base in these situations would invite similar arrangements elsewhere, undermining the goals of the new statute.[14]

V. CABLE OPERATORS SHOULD NOT BE ENTITLED TO REPEATEDLY RECOVER THE COST OF HOME WIRING FROM CUSTOMERS.

A few commenters raise issues of valuation of the cable inside wiring in the event the Commission requires a transfer of ownership or other disposition.[15] USTA notes that the expansive opportunities for revenue from customers make it

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[13] See NCTA at 2-3. NCTA argues that the active electronics in loop design presents a problem. NCTA at 5 and 8.

[14] See H. Rep. 102-628, Committee on Energy and Commerce, June 29, 1992 at 119.

[15] See Times Mirror at 5 (claiming it should recover some undefined "salvage value" for wiring.)

unlikely that there is any unrecovered investment.[16] Cable companies typically expense installation costs as soon as possible. Thus, both the labor and materials involved in cable home wiring has long since contributed to cable's bottom line. In addition, the high level of monopoly rents paid by customers to cable service providers suggests that the customer has already paid, and indeed, paid many times over for the home wiring addressed in this proceeding, in installation fees and, in the absence of unbundling, in continuing monopoly rents.[17] The record does not make a case for "salvage value" for cable operators, particularly if this will be yet another line item that increases the average cable bill.

VI. CONCLUSION.

The Commission should immediately require unbundling of all cable home wiring, in all types of buildings, and require new wiring be expensed immediately, with ownership vested in the customer or the building owner. Embedded wiring should be recognized to have been installed as a fixture for the benefit of the customer-resident. A customer should not be subject to claims of objectionable conduct when he or she seeks to

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[16] See Media Access Project at 2.

[17] See Media Access project at 2; Contrast Time Warner at 26 (seeks to change the balance, now claiming entitlement to recovery of more that it might otherwise have shown in its financials or previously recovered, with new claims of "below cost" installation though cost has been buried in monthly fees.)

lawfully obtain access to new or additional broadband information or video resources.

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CERTIFICATE OF SERVICE

I, Stephanie Kantor, do certify that on December 15, 1992 copies of the foregoing reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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